

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
MASON COUNTY TO LESTER E. KRUEGER

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY and
SLADE GORTON, ATTORNEY GENERAL,

Appellants,

vs.

MASON COUNTY and LESTER E. KRUEGER,

Respondents.

SHB No. 90

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being a request for review of a substantial development permit issued by Mason County to Lester E. Krueger; having come on regularly for hearing before the Shorelines Hearings Board on the 2nd day of November, 1973, at Port Orchard, Washington; and appellants Department of Ecology and Attorney General appearing through their attorneys, Robert V. Jensen and Thomas Evans, Assistant Attorneys General and respondent Mason County not appearing and respondent Lester Krueger

1 appearing through his attorney, Leonard W. Kruse; and Board members
2 present at the hearing being Walt Woodward (presiding), Mary Ellen
3 McCaffree and Robert F. Hintz; and the Board having considered the sworn
4 testimony, exhibits, transcript, records and files herein and having
5 entered on the 23rd day of January, 1974, its proposed Findings of Fact,
6 Conclusions of Law and Order, and the Board having served said proposed
7 Findings, Conclusions and Order upon all parties herein by certified mail,
8 return receipt requested and twenty days having elapsed from said service;
9 and

10 The Board having received no exceptions to said proposed Findings,
11 Conclusions and Order; and the Board being fully advised in the premises;
12 now therefore,

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
14 Findings of Fact, Conclusions of Law and Order, dated the 23rd day of
15 January, 1974, and incorporated by this reference herein and attached
16 hereto as Exhibit A, are adopted and hereby entered as the Board's
17 Final Findings of Fact, Conclusions of Law and Order herein.

18 DONE at Lacey, Washington this 27th day of February, 1974.

19 SHORELINES HEARINGS BOARD

20 Walt Woodward
21 WALT WOODWARD, Chairman

22 W. A. Gissberg
23 W. A. GISSBERG, Member

24 Mary Ellen McCaffree
25 MARY ELLEN McCAFFREE, Member

26 Robert F. Hintz
27 ROBERT F. HINTZ, Member

26 FINAL FINDINGS OF FACT,
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AND ORDER

1 CERTIFICATION OF MAILING

2 I, LaRene C. Barlin, certify that I mailed copies of the foregoing
3 document on the 7th day of March, 1974, to each of the following
4 parties:

5 Messrs. Robert V. Jensen and
6 Thomas Evans
7 Assistant Attorneys General
8 Department of Ecology
9 Olympia, Washington 98504

10 Mr. Leonard W. Kruse
11 Attorney at Law
12 P. O. Box 126
13 Port Orchard, Washington 98366

14 Board of Mason County Commissioners
15 Mason County Courthouse
16 4th and Alder
17 Shelton, Washington 98584

18 Mr. Lester E. Krueger
19 St. Rt. 1, Box 499
20 Belfair, Washington 98528

21 the foregoing being the last known post office addresses of the above-
22 named parties. I further certify that proper postage had been affixed
23 to the envelopes deposited in the U.S. mail.

24 LaRene C. Barlin
25 LARENE C. BARLIN
26 SHORELINES HEARINGS BOARD

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BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
MASON COUNTY TO LESTER E. KRUEGER)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY and)
SLADE GORTON, ATTORNEY GENERAL,)
Appellants,)
vs.)
MASON COUNTY and LESTER E. KRUEGER,)
Respondents.)

SHB No. 90

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, a request for review of a substantial development permit issued by Mason County to Lester E. Krueger, came before the Shorelines Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree and Robert F. Hintz) at a hearing in the City Hall, Port Orchard, Washington, at 1:30 p.m., November 2, 1973.

Appellants appeared through Robert V. Jensen and Thomas Evans, Assistant Attorneys General. Respondent Mason County did not appear;

EXHIBIT A

1 respondent Krueger appeared through Leonard W. Kruse. Richard
2 Reinertsen, Olympia court reporter, recorded the proceedings.

3 Witnesses were sworn and testified. Exhibits were admitted.
4 Counsel made closing arguments.

5 From testimony heard, exhibits examined, arguments considered
6 and transcript reviewed, the Shorelines Hearings Board makes these

7 FINDINGS OF FACT

8 I.

9 In 1970, respondent Krueger purchased a parcel of land in Mason
10 County fronting for 180 feet on the south shore of Hood Canal about
11 seven miles west of Belfair. The parcel is bisected by a state highway.
12 The shoreside portion has a depth of about 20 feet between the line
13 of high water and the highway. The upland portion rises in a steep
14 gradient for about 1,000 feet from the highway and is subject to
15 slides. The shoreside portion includes an old wooden bulkhead in
16 poor repair at the line of high water. There are no other facilities
17 on the shoreside portion.

18 II.

19 Mr. Krueger, who resides on bulkheaded waterfront property
20 about one-half mile east of the instant land, desired to develop
21 the shoreside portion of the instant property as a homesite for his
22 children. On March 12, 1973, he applied for a substantial development
23 permit from Mason County for the construction and filling of a
24 bulkheaded area which would project seaward from the existing
25 bulkhead for a distance of 50 feet. On May 14, 1973, Mason County
26 approved the permit. On July 5, 1973, appellants filed a request

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 for review of the issuance of the permit. That request for review
2 is the subject of these proceedings.

3 III.

4 There is no sewage disposal system in the area. Mr. Krueger's
5 proposed residence would employ a septic tank and drainfield.
6 Because it would be difficult if not impossible to develop a sanitary
7 drainfield on the sloping, slide-prone upland portion, Mr. Krueger
8 planned the drainfield for the shoreside portion of the property.

9 IV.

10 A regulation of the Thurston-Mason County Health Department
11 requires that sanitary drainfields be at least 50 feet from salt water.

12 V.

13 Mr. Krueger's chief purpose in constructing the extended
14 bulkheaded and filled area 50 feet seaward of the existing high
15 water line is to comply with the regulation cited in Finding of Fact IV.

16 VI.

17 Mr. Krueger's property could be protected from salt water erosion
18 by the erection of a bulkhead on the existing high water line. The
19 proposed bulkhead and fill is not necessary for the protection of
20 existing facilities.

21 VII.

22 The shores of Hood Canal are of state-wide significance under
23 RCW 90.58 but Mason County, in issuing the permit, made no specific
24 findings as to the paramount interests of the people of the state,
25 to the preservation of the natural character of the shoreline, to
26 long-term over short-term benefits and/or to protection of the

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 resources and ecology of the shoreline.

2 VIII.

3 The intertidal zone fronting the instant property has natural
4 characteristics, is an oyster habitat, and is part of the most
5 intensive spawning area in Puget Sound and its tributaries for surf
6 smelt, an important salmon forage, recreational and commercial fish.
7 Construction of the proposed bulkhead and fill would kill oysters
8 and would destroy a spawning area for 25,000 to 400,000 surf smelt
9 a year. The proposed construction would remove forever 180 feet of
10 the state's intertidal zone resource.

11 From these findings, the Shorelines Hearings Board comes to
12 these

13 CONCLUSIONS OF LAW

14 I.

15 Because Mason County, in granting the instant permit, made
16 no specific findings as to environmental considerations required
17 in RCW 90.58, this Board must adjudicate this request for review
18 from its Findings of Fact as held up to applicable statutes and
19 regulations.

20 Pursuant to RCW 90.58, the State Department of Ecology adopted
21 Final Guidelines (WAC 173-16) on June 20, 1972. A stated purpose of
22 those Guidelines (WAC 173-16-010(1) is to "serve as standards for
23 implementation of the policy of chapter 90.58 RCW for regulations of
24 uses of the shorelines." WAC 173-16, therefore, is the yardstick
25 against which the instant permit must be measured.

26 II.

27 From Finding of Fact VIII, it is seen that the permit does not

1 "preserve the natural character of the shoreline," "result in long-
2 term over short-term benefit" or "protect the resources and ecology of
3 the shorelines" (WAC 173-16-040(5)(b), (c) and (d)).

4 III.

5 From Finding of Fact VIII, it also is seen that the bulkhead
6 and fill do not "minimize damage to fish and shellfish habitats"
7 (WAC 173-16-060(11)(b)).

8 IV.

9 From Finding of Fact V, it is seen that the proposed project is
10 for the purpose of creating land and from Finding of Fact VI that
11 it is not necessary for the protection of existing facilities. Both
12 of these points run afoul of guidelines in WAC 173-16-060(11)(e).

13 V.

14 From Finding of Fact III, it is obvious that respondent Krueger
15 faces a major problem in trying to provide a sanitary drainfield
16 for his projected residence if the permit he holds from Mason County
17 is invalidated by the Board. But if the only solution to that problem
18 is the development of an acceptable sewage disposal system, that is
19 what it must be. The residents and prospective residents of the
20 south shore of Hood Canal, sooner or later, probably must face up
21 to the fact that the Shoreline Management Act of 1971 (RCW 90.58)
22 simply does not permit that shoreline of state-wide significance to
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1 be used for the disposal of human sewage.

2 Therefore, the Shorelines Hearings Board issues this

3 ORDER

4 The permit issued by Mason County to Lester E. Krueger is
5 overruled and is remanded to Mason County for cancellation.

6 DONE at Lacey, Washington this 23rd day of January, 1974.

7 SHORELINES HEARINGS BOARD

8 Walt Woodward
9 WALT WOODWARD, Chairman

10 W. A. Gissberg
11 W. A. GISSBERG, Member

12 Mary Ellen McCaffree
13 MARY ELLEN McCAFFREE, Member

14 Robert F. Hintz
15 ROBERT F. HINTZ, Member

16 Tracy J. Owen
17 TRACY J. OWEN, Member

18 Ralph A. Beswick
19 RALPH A. BESWICK, Member

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27 FINDINGS OF FACT,
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